City of Lafayette
Meeting of the Lafayette City Council
Redevelopment Agency Meeting

MINUTES

Lafayette Community Center – Manzanita Room **June 8, 2009**
500 St. Mary's Road, Lafayette, California **7:00 p.m.**

1. CALL TO ORDER

Mayor Tatzin called the Regular City Council meeting to order at 7:00 p.m.

2. ROLL CALL

Present: Mayor Tatzin, Vice Mayor Andersson, Councilmembers Anderson and Federighi

Absent: Councilmember Anduri

Staff: Steven Falk, City Manager; Tracy Robinson, Administrative Services Director; Ann Merideth, Community Development Director; Tony Coe, Engineering Services Manager; Gonzalo Silva, Financial Services Manager; RobinTownley, Accountant; Matt Luttropp, Associate Engineer; Michael Cass, Assistant Planner; Donna Feehan, Administrative Analyst; Christine Sinnette, Senior Planner; Mala Subramanian, City Attorney; Joanne Robbins, City Clerk

3. PLEDGE OF ALLEGIANCE – led by Mayor Tatzin

4. ADOPTION OF AGENDA

Mayor Tatzin requested adjourning in memory of Larry Hazzard and Mike Kearney.

ACTION: It was M/S/C (Federighi/Anderson) to adopt the agenda. Vote: 4-0-1 (Ayes: Tatzin, Andersson, Federighi, Anderson; Noes: None; Absent: Anduri).

5. PUBLIC COMMENTS - None

6. PRESENTATIONS

7. OLD BUSINESS

Convene Redevelopment Agency

ACTION: It was M/S/C (Anderson/Federighi) to convene the Redevelopment Agency Meeting. Vote: 4-0-1 (Ayes: Tatzin, Andersson, Federighi, Anderson; Noes: None; Absent: Anduri).

8. STAFF REPORTS
A. Tracy Robinson, Administrative Services Director

Second Loan Agreement, and First Amendment to Loan Agreement, between the Lafayette Redevelopment Agency and the Lafayette Library and Learning Center Foundation

Recommendation: Review and consider the loan agreements between the Lafayette Redevelopment Agency and the Lafayette Library and Learning Center Foundation.

Mayor Tatzin noted there were no representatives from the Foundation present and suggested providing staff with comments and continuing the matter to the second meeting in June. He said he would recuse himself from participating in the matter and turned the meeting over to Vice Mayor Andersson.

Administrative Services Director Tracy Robinson said in order to complete construction of the Lafayette Library and Learning Center, $4 million is needed above and beyond what has been collected from the Redevelopment Agency from bonds issued, donations and the Library grant. In the staff report, several terms are proposed for the new loan. She said the Foundation has agreed to offer the RDA an additional $2.5 million for construction purposes.

The terms of the loan are as follows:

- The funds will be conveyed to the RDA by July 1, 2009;
- Interest will be 8% compounded annually;
- The interest rate on the first loan will be increased to 6.5% from 6.25% while the second loan remains outstanding;
- The loan and interest will be repaid in one lump sum out of the proceeds from the next RDA bond issuance, which will be, or on December 1, 2012, whichever is earlier, which needs to be stricken. It should read, "...it will be paid in one lump sum from the next RDA bond issuance."
- The second loan will be unsecured; however, it is proposed that the first and second loan be on par with each other.
- The first loan will not have seniority over the second loan.
- The loan payments be used in accordance with the usage and funding agreements previously adopted by the City, RDA, and the Foundation.

Councilmember Federighi questioned why the first loan would not have seniority over the second loan, and Ms. Robinson responded that they are actually on par together; the second loan will be repaid before the first loan, per the terms of the agreement.

Mayor Tatzin noted the agreement has not gone before the Foundation, but he discussed it with a few members of the Executive Committee. The Foundation will meet after the second June Council meeting and he expects that the Executive Committee will have reviewed the draft and will have comments back as to whether or not it will be recommended to their full Board.

Councilmember Anderson asked for an explanation of the changes on Exhibit 1A. Ms. Robinson explained that changes presume that the interest rate on the first loan is increased to 6.5% while the second loan remains outstanding. This is the only change to the exhibit. Because the exact repayment date of the first loan is uncertain, the exhibit actually may change depending upon when the loan is repaid. The rate will go back down to the original loan rate of 6.25%. She said she spoke with the City Attorney about including language in the amendment to the first loan agreement that the Exhibit 1A is illustrative and subject to change depending upon actual timing of repayment.

Mayor Tatzin added that Exhibit 1A is a draft and as calculations are checked, it may change again by the next meeting.

Vice Mayor Andersson questioned how the interest rate on the second loan and the changing rate in the first loan were negotiated. Mayor Tatzin said these are similar to terms he casually mentioned months ago when the Council contemplated the concept of a second loan. The 8% is consistent with what the RDA pays the General Fund. Increasing the rate on the first loan is a reflection of the added risk the Foundation is taking.

There was no public comment on the item.

ACTION: It was M/S/C (Anderson/Federighi) to continue the item to the next meeting on June 22, 2009. Vote: 3-0-1-1 (Ayes: Andersson, Federighi, Anderson; Noes: None; Absent: Anduri; Abstained: Tatzin).

Vice Mayor Andersson turned the meeting back to Mayor Tatzin.

9. PUBLIC HEARING

A. Tracy Robinson, Administrative Services Director
Proposed Budget for FY2009-2010 as amended on May 26, 2009.
Recommendation: Conduct public hearing and adopt Resolution 2009-036 and Resolution R2009-04 approving the Proposed Budget for FY2009-2010.

City Manager Steven Falk said at the last meeting, the Council deliberated over the proposed Budget and Work Plan for 2009/10. Staff presented the City Manager's recommended Budget which proposed an operating deficit in the General Fund of approximately $900,000 due primarily to a $540,000 State take-away and items the Council has typically reserved in a sinking fund. The Council eliminated $415,000 from the budget to bring it closer in line to a balance. Attached to the Resolution 2009-36 is a description of changes the Council wanted made to the budget.

Mr. Falk brought up two other items that have arisen since the last meeting; an informational item and an item requiring action. The first item relates to the State budget and articles in the news about the State retaining gas tax money and not forwarding it to cities. This is very fluid, but he wanted to alert the Council. If the State were to withhold all of the gas tax funds, the impact would be major, at $467,000, which is almost half of the annual CIP contribution. At last Thursday's Mayors' Conference, he spoke with other City Managers, and one manager indicated that his Council will be reviewing the City Budget every month during the year. He said staff would most likely do the same to inform the Council as to what the State is doing, what sales taxes are or are not flowing in, property tax assessment figures, and others.

Mr. Falk said the second item relates to the RDA budget and specifically to the Library project budget. He sat in on the initial inaugural meeting of the Committee planning the grand opening celebration today. The celebration planned is beyond the scope of what the City has put into the budget. The Committee anticipates thousands of people will attend, they want to start the day with a parade that will attract major groups in town, families, they anticipate closing Golden Gate Way, having a series of events running all day long and they want to hire entertainers and have food. He spoke with Jay Lifson at the Chamber of Commerce, who said a day like this would cost approximately $25,000.

The City has allocated money for a small celebration but nothing near this scale, and he recommended adding $25,000 to the budget. However, if the Council is not comfortable he could

propose an alternate amount to scale down expectations. He noted that the funding is from the Library Project Budget and it cannot be used for any other purpose other than the library. The Committee is looking to have a grand opening celebration that is consistent with the library and he said $25,000 would equal about $1 per person in Lafayette.

He asked for the Council to review and consider adoption of Resolution 2009-36, and if Exhibit A is amended it would need to be included in the motion. A second Resolution R2009-04 is for the RDA budget.

Vice Mayor Andersson referred to Exhibit A and said it looks as though there is $384,000 in fund changes and the increase in revenue below it is $32,000. He questioned if those should be added together. Ms. Robinson said she was trying to track the initial deficit level, so adding revenue decreases that deficit.

Councilmember Federighi questioned how much money was budgeted for the Library opening. Mr. Falk said there are several committees involved with the grand opening; the City's RDA will be responsible for hosting two events—a gala thank you dinner/reception to recognize members of the community who were essential in making the library project successful, and second, a gala grand opening which would be an all-community celebration held all day long on Saturday, November 14th. The budget currently has $20,000 total for both events, and staff recommends adding another $25,000 to it based upon feedback from event planners.

Councilmember Federighi questioned if the event planners were asked how to supplement the event rather than looking to the City. Mayor Tatzin said many activities will be entertainment by school youth groups for which there is no charge. They expect many of the consortium partners to participate and in some cases there is no charge, but in some cases there is a charge. Some of what they are trying to add is additional ways to keep people entertained while waiting in line. Mayor Tatzin said having gone to the Hercules Library opening, there was a fairly long waiting line to get in. He felt Lafayette's opening may attract more people because it is a larger community than Hercules. What Hercules did not do was entertain people while they were standing in the rain.

Mr. Falk also noted that there is a concern that the use of tents may be needed; a parade would shut down streets which would incur a cost for police and public works overtime; there is a fixed cost to bring port-a-potties in, and he believed that additional funds are needed.

Mayor Tatzin said there is no set budget for this event, and therefore, the request is to set a budgeted amount. If the Council wants to approve the exact appropriation later, the item could be returned.

Councilmember Federighi said she was very reluctant to spend another $25,000 on top of hearing about the State retaining gas taxes, felt times were tight and she was reluctant to immediately add funds to the budget. Even though it is still above the cap money, it still needs to be repaid.

Mayor Tatzin said there are many items in the budget that may not necessarily be spent, and the Council can convey the message that it wants the committee to be parsimonious in thinking about what they bring on board to keep expenses down. Mr. Falk felt the group needs a signal as to what the budget will be and then they will work within it. Councilmember Federighi believed that $45,000 for two parties is more than she was willing to support right now. Councilmember Anderson agreed, believed that $45,000 was too much and suggested a more reasonable amount. He thought that if it could be changed to $30,000, they might re-think holding a parade or

cut back on other items. He assumed those costs represent the City's costs for public works and public safety employees and he would be happy to support $30,000 and let the event planners return with a report with what can be accomplished with this amount. Mr. Falk felt $30,000 was a fair amount, and Councilmember Federighi supported $30,000 and asked them to try and come under budget.

Mayor Tatzin said there was another issue discussed at the last meeting, but no action was taken; Ms. Robinson proposed drawing down the Core Area Assessment reserve in this coming fiscal year, which is $100,000, which kept general fund expenditures lower. This money will not be there next year; there will be $100,000 increase in demands in the general fund or the City will need to decrease what is spent in the Core Area Assessment District by $100,000 to retain the same amount of general fund support. He proposed spreading the remaining Core Area funding over 2 years, use $50,000 this year, and reduce expenditures in the Core Area by $50,000 which would leave $50,000 for next year.

Councilmember Federighi said she did not remember a discussion on the item, did not object to what was being proposed, and had assumed the Council would return on a more frequent basis to make further budget adjustments. Councilmember Anderson said he believed this does affect the General Fund because the $50,000 will have to be made up.

Mayor Tatzin said he would assume the City would basically reduce its expenses by $50,000. Councilmember Federighi noted expenses have already been reduced in terms of watering, plantings, and she questioned what would a reduction of $50,000 do with already existing reduction measures in place. Mr. Falk said he would need to discuss this with the Public Works Director. Councilmember Federighi asked for information on what the effect would have, as downtown maintenance is a big investment and is important to retain its beauty and attractiveness.

Vice Mayor Andersson said in looking at it the way it is now and asking staff to cut it back assuming this is doable, then $50,000 could be applied next year rather than deciding right now what that would mean. Mayor Tatzin suggested asking staff to provide these ideas quickly because they will start spending the budget down on a run rate.

Councilmember Anderson asked that staff provide a report on what a reduction of $50,000 would be within the next one-two months in order to make a decision.

Vice Mayor Andersson questioned whether or not the State had the authority to retain gas tax money, and Mr. Falk said he saw nothing that indicates they have such authority.

Mayor Tatzin opened the public hearing. There were no public speakers, and the public hearing was closed.

ACTION: It was M/S/C (Andersson/Anderson) to adopt Resolution 2009-036 approving the Proposed Budget for FY2009-2010. Vote: 4-0-1 (Ayes: Tatzin, Andersson, Federighi, Anderson; Noes: None; Absent: Anduri).

ACTION: It was M/S/C (Andersson/Anderson) to adopt Resolution R2009-04 with the adjustment of the one account to $30,000. Vote: 40-1 (Ayes: Tatzin, Andersson, Federighi, Anderson; Noes: None; Absent: Anduri).

Mayor Tatzin thanked staff who worked on the budget and ran the programs throughout the year, stating there are many entities that are facing very difficult times because they did not practice prudent budgeting during good times. The fact that the City has a cushion to weather a severe downturn is commendable.

Vice Mayor Andersson asked staff to agendize a recommendation as to how often the budget should be reviewed, and Mr. Falk agreed to provide information as soon as staff receives it and discuss it at every available Council meeting.

Councilmember Anderson questioned when figures would be released on property taxes, and Mr. Falk said typically the assessor will announce the findings on June 30th, but they do not show up on the rolls until mid-August.

Adjourn Redevelopment Agency

ACTION: It was M/S/C (Anderson/Federighi) to adjourn the Redevelopment Agency Meeting. Vote: 4-0-1 (Ayes: Tatzin, Andersson, Federighi, Andersson; Noes: None; Absent: Anduri).

Mr. Falk requested the Council defer Item B until Ms. Sinnette arrived, and Mayor Tatzin moved up the Consent Calendar on the agenda.

10. CONSENT CALENDAR

Mayor Tatzin noted a request to remove Item D, and Councilmember Federighi requested removal of the 5:00 p.m. May 26, 2009 Minutes; Item A.1.

ACTION: It was M/S/C (Federighi/Anderson) to convene as the Redevelopment Agency and approve Consent Calendar items A.2, 3 and 4; B, C, and E. Vote: 4-0-1 (Ayes: Tatzin, Andersson, Federighi, Anderson; Noes: None; Absent: Anduri).

A. City Council Minutes

2. **May 28, 2009**
   Recommendation: Approve.
3. **June 1, 2009**
   Recommendation: Approve.
4. **June 3, 2009**
   Recommendation: Approve.

B. League of Women Voters Lease Agreement for use of a room at the Lafayette Community Center

Recommendation: Renew a lease with the League of Women Voters for another three years at the following annual rates: $12,732 beginning May 1, 2009; $13,114 beginning May 1, 2010; $13,507 beginning May 1, 2011.

C. Request for Sign Permit at the Lafayette Community Center, 500 St. Mary's Road, APN 237-260-035

Recommendation: Waive the requirement for an encroachment permit and an encroachment agreement and authorize Parks, Trails & Recreation staff to install the approved sign.

Convene Redevelopment Agency

E. **Settlement Agreement between the Redevelopment Agency and Killefer Flammang Architects, LLC regarding the Lafayette Library and Learning Center**
Recommendation: Approve the Settlement Agreement between the Redevelopment Agency and Killefer Flammang Architects, LLC regarding the Lafayette Library and Learning Center.

Adjourn Redevelopment Agency

ACTION: It was M/S/C (Federighi/Anderson) to adjourn the Redevelopment Agency. Vote: 4-0-1 (Ayes: Tatzin, Andersson, Federighi, Anderson; Noes: Absent: Anduri).

Items Removed:

D. **Status Update on the Happy Valley Road Pathway Relocation Project Number 014-9676**
Recommendation: 1) Reject all bids for the Happy Valley Road Pathway Relocation Project. 2) Direct staff to move forward with the construction of a split rail fence from 3786 Happy Valley Road to Valory Lane provided that there is neighborhood support for this project and the Happy Valley Improvement Association maintains its original funding contribution commitment of $20,000.

Associate Planner Matt Luttropp said staff has been working with the Happy Valley Homeowners to get easements for a pathway realignment on Happy Valley Road between Franklin and Valory Lane. At this time, they have only been able to get one of the fronting property owners to agree to an easement. Three of the other five have declined to provide the City with an easement and one remaining property did not require an easement.

He said out of the original planned realignment requested by the neighborhood, they will only be able to construct one-fifth of what they had originally hoped for. Half of the realignment would be a 2-2.5 foot shift, and at this time, staff is looking for direction as to where to go with the grant funds which will expire at the end of the month. Staff requests the Council reject the bids received for the originally scoped project because it is not buildable, and if the neighborhood is willing, the City could propose an alternative scope of work when the project was originally started, which was to construct a split rail fence along the edge of the road in this area. A member of the Happy Valley Improvement Association is present, but Mr. Luttropp was not sure if he was able to canvass the neighborhood or not.

Vice Mayor Andersson questioned and confirmed that a signed contract must be delivered to the grant authority by the end of the month, and this week, Mr. Luttropp would need to talk to and provide the paperwork to the contractor for expedient completion.

Public Comment:

BILL BUCHER, Happy Valley Improvement Association, said several months ago the plan was great and neighbors raised a great amount of money which is still awaiting use. He said he just became aware of the snag in the last couple of weeks, and understanding the timeline and agreement by the neighbor, he suggested doing what can be done which will improve some amount of safety and allow time for neighbors and the 40 donors to be canvassed. He did not want to do anything on the other properties until feedback is received.

Mayor Tatzin questioned whether this would require the Council to reject all existing bids and ask people to bid for a lesser project. Mr. Luttropp said there is not enough time to re-bid the work, but a reduced scope can be negotiated and awarded. Mayor Tatzin questioned whether some of the Happy Valley Improvement Association money could be used if there were any difference. Mr. Bucher said he would feel more comfortable in contacting the donors and Association first and then act. He hoped that grant money can cover the smaller amount that can get done.

Councilmember Federighi said the staff report mentions that for a short stretch of road and the visual inconsistencies may not be that desirable for the neighborhood. She wondered how the neighborhood would feel about this if only a portion could be done. Mr. Bucher said they have not posed this exact question, but some people have looked at the section to be done and no one felt this was a big issue or visual impact. Also, by doing this, the need for safety does not go away and they look at this as more of a hang up due to time constraints. Their goal is to actually achieve the easement so the project can move forward, so by giving them a little more time, they can have local residents talk about alternatives.

Councilmember Anderson questioned if Mr. Bucher was clear about how small the area is, and Mr. Bucher said he did, but felt it was also a critical piece because it is near the bend in the road and consistent with their overall goal to have it done.

Mayor Tatzin questioned and confirmed that what Mr. Bucher has proposed is feasible, and Councilmember Anderson questioned and confirmed it is safe. Vice Mayor Andersson said he spoke with Mr. Bucher on Saturday and indicated that if half the project was done, eventually the neighborhood might convince neighbors to grant easements and with money, complete the project. The other scenario is that it does not happen. If it were not to happen and the neighborhood was left with half a project, he questioned if the neighborhood would agree to a fence or other approach to the remaining portion.

Mr. Bucher said if easements cannot be approved he will ask neighbors directly about a proposed fence. Vice Mayor Andersson questioned the likelihood of obtaining easements versus installing the fence as part of the initial project. Mr. Luttropp said he estimated the fence would cost $6,000 for the full stretch. Mr. Bucher said he would ask donors if funds could be used for that purpose until such time they can relocate the path, which he confirmed may not happen for awhile. Mr. Bucher confirmed residents do want something done to improve safety.

Councilmember Federighi confirmed with Mr. Luttropp that the absolute deadline was the end of the month, and there would not be time for neighborhood consultation. Vice Mayor Andersson referred to the fencing scenario and said if the association was able to say they could commit $2,000 and want the fence done, he questioned whether it be done by the same contractor or a different contractor.

Mr. Luttropp said it would depend upon the timing of his notification regarding the fence. Since the shortened project to take care of the path will likely take most of the grant money, the association could pay for and install the fence themselves, which would actually be cheaper. Mayor Tatzin confirmed they would simply need an encroachment permit.

Mayor Tatzin noted the options are: 1) approve the recommendation from the Happy Valley Improvement Association to ask staff to modify the contract to do the trail work only in those areas where an easement can be obtained, and wait until they caucus with members as to what would be done in the other areas, or 2) the Council can reject all bids.

Councilmember Anderson supported the first approach. Mr. Luttropp said the Council would still need to reject all bids and staff would negotiate with contractors to obtain a price. Councilmember Federighi voiced her support for the first option, and felt if homeowners wanted to use remaining funds they collected and at a cheaper price, they could arrange to have the fence installed.

Mr. Coe recommended delegating authority to staff or the Mayor to sign the final scope of work. Mayor Tatzin said the Council can reject all bids, ask staff to negotiate a revised contract for a portion of the work, enable the Mayor or City Manager to sign the final scope of work and await the association's word prior to taking next steps.

ACTION: It was M/S/C (Anderson/Federighi) to reject bids, direct staff to negotiate the revised scope of work with contractor not to exceed grant funding available and authorize the City Manager or Mayor to sign the contract. Vote: 4-0-1 (Ayes: Tatzin, Andersson, Federighi, Anderson; Noes: None; Absent: Anduri).

A. City Council Minutes

1. May 26, 2009

Recommendation: Approve.

Councilmember Federighi requested the following amendments to the 5:00 p.m. meeting:

- Page 3, 2nd full paragraph; replace "questioned whether" with "acknowledged that".
- Page 3, 5th paragraph, 2nd sentence: "....she did not believe the plan was ~~not~~ consistent in terms of height."
- Page 14, 4th paragraph; she is credited with something Commissioner Maggio questioned; "Commissioner Maggio questioned the context material and asked where it was fabricated."

ACTION: It was M/S/C (Federighi/Andersson) to adopt the Minutes of May 26, 2009, as amended. Vote: 4-0-1 (Ayes: Tatzin, Andersson, Federighi, Anderson; Noes: None; Absent: Anduri).

B. Christine Sinnette, Senior Planner

GP02-08, CITY OF LAFAYETTE (APPLICANT), ANNA MARIA DETTMER TRUST, MICHAEL & SARA KIM, ZBIGNIEW NAGLICKI LIVING TRUST, STATE OF CALIFORNIA (OWNERS): Initiate proceedings to amend General Plan Map I-1 to reclassify four properties (APN 232-140-004, 232-140-010, 232-140-016, and 232-150-021) located on Deer Hill Road from Low Density Single Family Residential to Rural Residential Single Family and one property (232-140-014) on Deer Hill Road from Administrative/Professional/Office/Multifamily Residential to Rural Residential Single Family. The City may also consider initiating proceedings to amend General Plan Map I-1 to reclassify two properties (APN 232-150-027 and 232-150-028) located on Deer Hill and Pleasant Hill roads from Administrative / Professional / Office / Multifamily Residential to Rural Residential Single Family and/or Low Density Multifamily Residential.

RZ02-08, CITY OF LAFAYETTE (APPLICANT), ANNA MARIA DETTMER TRUST, MICHAEL & SARA KIM, ZBIGNIEW NAGLICKI LIVING TRUST, STATE OF CALIFORNIA (OWNERS): Initiate proceedings to change the zoning designation for four properties (APN 232-140-004, 232-140-010, 232-140-016, and 232-150-021) located on Deer Hill Road from R-20 to L-R-10 and one property (232-140-014) on Deer Hill Road from APO to L-R-10. The City may also consider proceedings to initiate rezoning two properties (APN 232-150-027 and 232-150-028) located on Deer Hill and Pleasant Hill roads from APO to L-R-10 and/or MRP and/or MRT.

Recommendation: Conduct the public hearing, consider the matter and direct staff to initiate proceedings to amend the General Plan and zoning designations and proceed with environmental review by motion.

Senior Planner Christine Sinnette said the purpose of the meeting is to provide the Council with a status report and provide direction on the initiation of proceedings to amend the General Plan and zoning designations for seven properties in the eastern Deer Hill area. Previously, the City Council directed her to initiate the proceedings for five of the seven properties and to propose rezoning to LR-10 for those five properties. A determination still needed to be made on the two properties that front on Pleasant Hill Road.

At the last meeting, the Council continued the item for the property owner and/or her representatives to submit preliminary development plans on which the City may wish to base a development agreement. To date, no material or correspondence has been submitted to staff regarding any proposed development.

At the last meeting, a majority of Councilmembers supported a rezone to LR-10 for the upper portion of Parcel 27 and for the lower part of Parcel 27, a potential zoning of MRT, and MRT for Parcel 28, which is a former gas station site. LR-5 was also suggested for the upper portion of Parcel 27. There did not appear to be any support for any mixed office/residential zoning on any of the properties. She referred to Table I which identifies the five properties already determined to be proposed for LR-10. Table 3 shows the two parcels staff is now recommending for the additional rezoning. She said any of the designations could be considered by the Council based on previous direction to look at a possible zoning to residential for these properties, as well as potential consistency with the General Plan, goals and policies related to the Deer Hill area.

It is staff's opinion that the zoning and General Plan designations are appropriate because they take into account regulatory and environmental constraints such as ridgeline setbacks and riparian habitats, and balance the City's desire to retain the semi-rural character of its hillside lands with the needs of private property owners. Throughout the various hearings and on this application and hearings on the previous application, the City has been challenged on the premise that these properties in eastern Deer Hill are needed to meet the City's required regional housing needs. Staff has consistently said the housing sites inventory in the current housing element, as well as the current element being updated, provides enough housing to meet regional housing needs.

City staff and the City's housing consultant have been working with the HCD staff and have discussed its methodology for determining inventory sites. The Downtown Strategy also indicates there will be a number of multi-family housing sites that could accommodate the City's regional housing needs. Staff reports to date have not significantly discussed this because the project description is trying to define what the project will be, these issues will be analyzed in the environmental review and future staff reports. She also noted that staff has forwarded its first draft to HCD and they sent a comment letter back indicating they want more information related to housing sites and resources, as well as other items. The City's housing consultant has indicated that such letters are common, and they are simply asking the City to revise and ensure it complies with State law, including a number of new items in this year's element.

In closing, staff's recommendation is to move forward with the designation of the two properties, and once a project description is determined, staff will enter into an agreement with a consultant to prepare the environmental documents.

Vice Mayor Andersson referred to Table 3 and the upper portion of Parcel 27; if this were LR-10, would it allow for one unit. Ms. Sinnette said the zoning would allow up to 2 units, and if LR-5, it would allow 3 or 4 units.

Vice Mayor Andersson referred to the lower Parcel 27 and on Parcel 28, and he confirmed that Parcel 27 could possibly allow up to 29 unit, which is liberal given the setbacks required from Pleasant Hill Road and setback from the freeway. Parcel 28 is somewhat deceiving because it identifies it as being a 1.91 acre parcel, but about 50% of the parcel is a slope of 30% or greater. The real development potential is about .18 acres which could lead to 13 units.

Vice Mayor Andersson also said there is a short stretch of sidewalk which is in the Class I Ridge setback, and he questioned how that affected the parcel. Ms. Sinnette said as the properties are currently zoned as APO, they are not subject to hillside regulations. If zoned residential such as MRT, then hillside regulations would apply. This property happens to be in a Class I ridgeline which is the most exclusive, so any development that occurs must have specific findings made that would allow for some economically viable use of the property.

Vice Mayor Andersson said if one wanted to build 13 units, a finding could be made for a financially viable use, but he questioned if it would be less than that number because of the ridgeline. Ms. Sinnette said yes, the City needs to allow the level of development such that the property owner maintains an economically viable use of the property, the number of which has yet to be determined. It must be based on the purchase price, number of years, the money gone into the development of the property and an economic feasibility analysis needs to be done.

Vice Mayor Andersson said if the analysis yielded 3 units, he questioned whether the Class I setback requirements mean this is all that could be achieved or could there be some flexibility in the review process. Ms. Sinnette said there is no flexibility with the way the ordinance is currently written; it boils down to what the economic viability of the property is. The only other potential option is that there had been discussions at Planning Commission meetings as to how appropriate the ridgeline setback was to run down into Pleasant Hill Road and across Deer Hill Road into the highway. She believed that a property owner might apply for a text or map amendment or rezoning to take it out of the ridgeline, and staff would evaluate whether or not the ridgeline was appropriate.

Mayor Tatzin confirmed that the MRT zone is subject to the hillside development regulations, and the lower portion of Parcel 27, after looking at setbacks one would not achieve 27 units. Therefore, the assumption that there is about .8/10's of a unit of Parcel 28, and he questioned whether this includes both not building on the steep portion of the hill as well as the setbacks. Ms. Sinnette said the City actually paid for an engineering company to do a slope analysis which revealed that about half the lot was 30% or greater slope, so the 13 units is strictly .81 times 17 and it does not include the setback requirements, which would reduce it further.

Mayor Tatzin said if he were an applicant looking at this, would he locate units only on the developable portion of the site? Ms. Sinnette said they could cluster which is in the hillside overlay district. Mayor Tatzin said therefore the Council could see an application for 34 units which would be roughly consistent with the MRT zoning, and Ms. Sinnette concurred.

Mayor Tatzin opened the public hearing. Mayor Tatzin noted the City is the applicant and policy allows for a presentation followed by comments by others; however, he proposed allowing representatives of the property owners to make a combined presentation if they wished.

David Bowie, Attorney, representing Anna Maria Dettmer, property owner, said Alan Moore is also present representing Ms. Dettmer and they would prefer the Council to leave the property in the current zoning designation. He said the real estate market is difficult and the level of interest in the ability to develop is problematic. He expected and had hoped to return with a specific project proposal which would be acceptable to a developer as well as Ms. Dettmer, but have not been successful. He referred to earlier comments having to do with the budget process and said it is not easy to arrive at ways to meet budgetary requirements in today's environment. He was cognizant of the comments by Councilmember Federighi regarding reluctance to incur additional monies given the uncertainties of times.

He suggested an attempt to assist the City in its budget deliberations, and said if the Council chooses to proceed with a rezoning of the property a specific plan will need to be done for the general area. Secondly, an environmental evaluation will need to be done which is more than doing a mitigated negative declaration, an expense the City would incur to proceed with the rezoning. In addition, regarding the draft housing element comments, and having read the State's comments regarding the City's earlier staff submittal, there is a much more serious and difficult problem to meet the State's requirements for a housing element. He felt there were serious questions as to whether or not the City has done a proper job in allocating inventory for affordable housing purposes. He obtained a copy of the State's report and comments, and what jumped out to him were repeated references to the difficulties in trying to create an assemblage of properties sufficient to develop affordable housing. He said the situation is that the current housing element allocates ±140 units to zoning designations which would suggest a major portion of those 140 units have actually been allocated to the Dettmer properties, which is property available right now for use in the City's inventory. If the City wants to make its task easier in terms of an approvable housing element, he suggested leaving open the current zoning designation and the possibility of using this property to meet affordable housing requirements because the City already has an assemblage. He felt it does not good to downzone the property, while devaluing much of its economic value at the same time. He felt they could assist the City in its budgetary process—no specific plan, no environmental evaluation, and the City can have an acceptable housing element which will reserve affordable housing for the area while keeping the same zoning designation.

Mr. Bowie also commented that to some extent, it is inappropriate to downzone Parcels 27 and 28; Parcel 28 is steep and 50% is steeper than 30% in grade. It also used to be an old gas station site and not pristine and it would seem most sensible to keep the same designation which would not make it subject to setback requirements for Class I ridgeline. He felt flexibility will be needed in dealing with this particular property, and the property he felt should be developed. The suggestion that the area might be able to be remapped so it is no longer a Class I ridgeline would be a tall order and difficult to do.

It also makes little sense to him to set aside Parcel 27 into an LR-10 zoning designation. Historically, the City has looked at the entire parcel of trying to determine how many housing units might be placed on the area. In the past, the designation has been significant, at 150-160 units. This is actually an area appropriate for housing because although it is flat, it is only visible from the El Curtola area coming from the freeway and from other upper regions, and not from lower public elevations. It is an area that could be developed nicely, screened with landscaping and bermed, and the net result would be that it is an ideal area to do a more concentrated residential development, especially when it is not pristine hillsides. He felt it would not make sense to put one or two large, estate homes on the property, and it would not mitigate any concerns the City has regarding development on the site. He requested leaving the zoning designation as is. With market conditions the way they are, it is doubtful as to whether they will be before the Council with a specific project in the immediate future. Possibly at a later time, the City will have different

budgetary constraints and will not worry about taking money for streets and roads and put money into a study it will need to rezone this property.

Councilmember Federighi questioned whether it would be necessary for the City to do a specific plan of the area if the property was down-zoned. Ms. Subramanian said the Council addressed this at a prior public hearing and there would be no requirement. The General Plan encourages it, but there is language that references the word, "should" as opposed to it being a mandatory requirement.

Mayor Tatzin closed the public portion of the hearing.

Ms. Sinnette said she had no additional comments.

Mayor Tatzin said with regard to Parcel 28, he voiced concern that even if it were made an MRT zoning, the negotiations over an application for 34 units on the site will be unpleasant and unproductive. He questioned if there was any way to do a density transfer to Parcel 27. If the City likes the concept of that much density and to have Parcel 28 to have very low density but allow Parcel 27 to have more.

Ms. Sinnette said this is a possibility and a topic that would be under discussion as part of a development agreement. Mayor Tatzin said he thought that according to State Housing law, for a parcel to count for affordable housing, it must have at least 20 units per acre with the underlying zoning.

Ms. Subramanian questioned if this was under the regional housing allocation, and Councilmember Anderson said this was discussed at a previous meeting and was part of the assessment process made of the parcels identified. There is a floor of 20 units per acre. Ms. Subramanian said again, these properties have not been considered and are not needed for the housing allocation.

Councilmember Federighi said she remembers this and thought it had to do with affordable units, but she was not sure what the context was. Councilmember Anderson said he remembers that in the analysis of these parcels that the Council identifies, if the zoning does not support at least 20 units per acre, they were not willing to consider them as potential sites for affordable housing. However, they could be counted toward the City's housing allocation. Councilmember Federighi agreed. She said she thought that staff indicated that 13 units was the maximum for Parcel 28.

Mayor Tatzin said given the nature of the MRT zone, he questioned whether or not someone could submit an application for 17 units per acre times the entire acreage, and he confirmed with Ms. Sinnette that this could be done, given practical limitations.

Councilmember Federighi felt at this point, the Council can move ahead, there is no need to do a specific plan, the matter has been put off a couple of times, having been fairly well assured there would be a developer and a plan, and even if subsequently a developer comes and has a viable plan, the barrier is more difficult but a specific plan or PUD could be done. She would favor that on the upper portion of Parcel 27, LR-10 is too stringent and she would prefer a designation of LR-5.

Councilmember Anderson supports the recommendation from the last meeting; that we put aside to give the owner an opportunity to return with a development agreement, and he acknowledged

that the market is difficult. He still thinks there has been a lot of opportunity and time for something to come forward.

Councilmember Anderson made a motion to support staff's recommendation that it be LR-10 on the upper portion which would be consistent with other parcels adjacent and above it, and rezone the MRT on a split zone on the lower portion of Parcel 27 and on Parcel 28.

Vice Mayor Andersson referred to the upper portion of Parcel 27 and would agree that LR-5 would be better. He believes there is potential for denser development on the plateau area outside the Class I setback. He is a bit concerned about Parcel 28 and by changing the zoning, the City is initiating the ridge setback, which would minimize any kind of development there. He was not sure this was the best result. He did not now whether leaving it APO was correct, but going from that to an economically minimal requirement is a leap and not the best non-use of the property. He questioned if there could be some density transfer to maximize the use of the lower part of Parcel 27. If he were the applicant, he would also be wary of having to go in on an amendment to the text of the ridgeline setback requirements. He was not sure the intent of the ridgeline setbacks are served on an area next to Pleasant Hill Road that at least half of which is flat. Therefore, he was not sure what to do with Parcel 28; if some density transfer could be made to the lower portion of Parcel 27, this might be an appropriate resolution.

Mayor Tatzin concurred with Councilmember Anderson regarding the upper portion of Parcel 27. He suggested the next step could be to do an EIR; that one could be the project and one could be an alternate, and both should be studied. Regarding the lower portion of Parcel 27, he was comfortable with the staff recommendation. He shared Vice Mayor Andersson's concerns about Parcel 28. He remembers the gas station there and if something more intensive was built, it would look more out of place with the hillside behind it. He would be willing to support some sort of density transfer of at least some of the allowed density to the lower portion of Parcel 27, which strikes him as the best outcome.

Councilmember Federighi said in addressing Parcel 28, she felt it was very difficult, and most Councilmembers were in favor of having it be a residential use rather than a commercial use, but it does not lend itself to a single family home either. She preferred a density transfer but a partial one and not 34 units.

Mayor Tatzin questioned how this could be written as a project description. Ms. Subramanian said staff is having concerns over the density transfer which staff was trying to accomplish as part of a development agreement which did not occur. Absent a different zoning, she was not sure clustering can be used in an attempt to push the density onto the lower portion of Parcel 27.

Mayor Tatzin said he preferred doing the density transfer through zoning and to make Parcel 28 a low density at R-40 or R-60 zone and increase the allowable density on the lower portion of Parcel 27. He questioned what the lower density would be. Ms. Sinnette said staff had looked at MRP; one-story office residential, but if residential is being considered, there is R-100, R-65 or R40. For multi-family residential, there is MRA, which has a FAR based on lot size square footage. For 80,000 square feet, you would have an FAR of .64. The FAR does not identify dwelling units, but building mass. So, someone could do a series of studios or three bedroom units, subject to adequate parking.

Mayor Tatzin said if you take 51,000 square feet and assume 1,200 square feet per unit, there are about 40 units. Height in MRA is not to exceed 25 feet; MRB is similar, but is different in height at

not to exceed 35 feet. She said for MRB, the minimum lot size would be 10,000 square feet but there is no density.

Ms. Sinnette said she looked at the APO when the Council was discussing it and actually MRT allows a building height of 25 feet where the APO allows a maximum height of 22 feet. Also, for lots less than 4 acres, anything needs a use permit for any type of development. She also said she did not know if Parcel 27 was looked at, but when she mentioned east and west of the site's drainage, west would be part of the upper section and includes the lower part that is currently developed just outside the ridgeline setback. So, if an LR-5 was being looked at, a couple of units might be able to be developed down there and still be able to address visibility issues on the upper portion.

Vice Mayor Andersson noted the MRB has a 35 foot height, and he asked if it has a FAR or density requirement. Ms. Sinnette said regarding density, one dwelling unit may be constructed for each 2500 square feet or more of lot area. Vice Mayor Andersson noted this would work out to 17 units per acre, or 32 units for 80,000 square feet.

Councilmember Federighi said she is wavering back to retaining the APO on Parcel 28 and keeping MRT on the lower portion of Parcel 27. Councilmember Anderson felt the one most important to him is the upper portion of Parcel 27, and the Council is split on this, but could check it during the environmental process. It sounds like there are a couple of ways to allow about 34 units through MRB or MRA on the lower portion. He felt the height of the MRB zoning would be more accommodating to possibly allow parking underneath, which would be an urban set up. Councilmember Federighi questioned whether or not that sort of height would be wanted at that site, with 35 feet versus 25 feet. Councilmember Anderson said he was happy to support the MRA at 25 feet. Mayor Tatzin questioned if the MRA allowed for more density in terms of numbers of units, and Ms. Sinnette said it would still rely on the underlying General Plan, which would be 17 units an acre. With the MRA it is a sliding scale of a FAR going from 10,000 square feet with a FAR of .25 up to 80,000 or more with an FAR of .64. So, the City is still looking at potentially 17 units per acre, which Councilmembers Federighi and Anderson said does not change anything except for the height.

Mayor Tatzin asked that for the project description, to make the upper portion LR-5 with an alternative of LR-10, propose MRA for the lower portion, and the Council is still not unanimous in support for Parcel 28. Councilmember Anderson suggested leaving Parcel 28 APO and see what the environmental document revealed. Mayor Tatzin said for a lower density alternative, an LR-60 could be looked at, with LR-10 at the upper portion of Parcel 27.

Mayor Tatzin said if the property owners came in with an application on the parcels prior to the Council adopting something new, he questioned what rules would govern. Ms. Subramanian said staff has asked the Council to initiate proceedings because once they are initiated, these are the set of rules that would govern a subdivision, assuming the Council moves forward in adopting the motion.

Vice Mayor Andersson said one reason he was looking forward to seeing the item return was that he was hoping that the applicant would bring in a proposal. Primarily, it is the upper portion of Parcel 27 which he finds an intriguing, unusual spot that begs for creativity in a development proposal. His hope would be that perhaps the owner could at least propose something creative and different, perhaps a higher density than LR-5, which depending upon timing, might be considered as a higher density alternative to consider in environmental review.

ACTION: It was M/S/C (Anderson/Federighi) to direct staff to initiate proceedings to amend the General Plan and zoning designations to be considered in the project description would be a split zone on Parcel 27, the upper portion being LR-5, the lower/eastern portion being MRA, and that there be a lower density alternative for the upper portion of LR-10, and that Parcel 28 be zoned at APO with an alternate consideration of R-60, and to proceed with environmental review. Vote: 4-0-1 (Ayes: Tatzin, Andersson, Federighi, Anderson; Noes: None; Absent: Anduri)

11. COUNCIL/COMMISSION REPORTS

A. Councilmember report on activities and consideration of matters a councilmember wishes to initiate for placement on a future agenda.

Councilmember Federighi said there have been many meetings on the Downtown Specific Plan.

Mayor Tatzin requested that the City priorities timelines be updated for the first meeting in July. He reported out on the Lamorinda breakfast and discussed the Senior Transportation Program. They did not recall having received requests from the City's Coordinator but said they would consider it. He reiterated that funding is needed and at some point there will be less or no service, and that Lafayette had committed another $25,000 for this year. They discussed upcoming programs which all cities will be involved with regarding teenage consumption of alcohol. They discussed the status of the police report, the Moraga Specific Plan and the Lafayette Specific Plan and everyone's interest in traffic. Other cities have introduced metering lights, and at some point, this could be initiated.

Councilmember Anderson reported on the Solid Waste Authority Meeting regarding the environmental purchasing policy, stating he was not sure if Lafayette had this policy in place. Ms. Merideth said the City offices are green, and the City has won an award.

Mayor Tatzin said the Council took no action on nutritional guidelines from the last Council meeting. He was contacted by the sponsor who indicated Lafayette was the only City who took no action. He noted that what was presented was not clear and if she wanted to provide more information, the Council would re-consider it.

12. WRITTEN COMMUNICATIONS

A. Invitation from Chris McKenzie, League of California Cities Executive Director, for a summit meeting of city, county and school officials July 17-18 in Sacramento to discuss and debate the emerging proposal to reform our state governance and fiscal systems.

Recommendation: Discuss and direct staff.

Mayor Tatzin asked each Councilmember to respond to the City Clerk as to their availability and Vice Mayor Andersson and Councilmember Federighi both confirmed they would be available.

13. ADJOURNMENT

The City Council adjourned in memory of Larry Hazzard and Mike Kearney at 8:45 p.m. to the next Regular City Council meeting on June 22, 2009.

APPROVED:

_____
Don Tatzin, Mayor

ATTEST:

_____
Joanne Robbins, City Clerk